

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 4645 OF 2014

Shri Jugrajiji Mutha Nagari
Sahakari Patsanstha Maryadit, Dhule
Through its authorised person
Sau Shoba Namdeorao Khairnar,
Age: years, Occupation : Service,
Resident of : C/o Lane No. 2, Dhule,
Taluka and District Dhule

...Applicant
(Ori. Complainant)

versus

1. Shri Rajendra Kanhiyyalal Bothra
Age: years, Occupation :
Resident of : 38 Nityanand Nagar,
Opposite Nitayanand Bhavan, Dhule. (Ori. Accused)
2. The State of Maharashtra ...Respondents

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Mr. Mukul S. Kulkarni, Advocate for Applicant
Mr. Anudeep Sonar, Advocate holding for
Mr. N.L. Choudhari, Advocate for respondent No. 1
Mr. B.L. Dhas, A.P.P. for respondent No. 2

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CORAM : A.I.S. CHEEMA, J.

DATED : 25th FEBRUARY, 2015

Order :-

1. Heard learned counsel for the applicant - original complainant and learned counsel for respondent No. 1 - original accused. Perused the record.

2. Learned counsel for the applicant submits that loan was disbursed to respondent-accused No.1 of Rs. 5,00,000/- in April, 2003, regarding which documents at Exhibits 53 to 58 were proved by the complainant, however, the trial Court wrongly discarded the evidence on the ground that the cheque issued was 'Self' and not account payee.

3. Learned counsel for the applicant submits that respondent No. 1 - original accused was one of the Directors of Pathsanstha and as per his desire cheque of 'Self' was issued and the trial Court has wrongly appreciated the evidence.

4. Learned counsel for respondent No. 1 - original accused submits that the trial Court has discussed the nature of documents Exhibits-53 to 58 in paragraph No. 13 of the judgment and for the reasons recorded, disbelieved the evidence. Learned counsel further submits that the trial Court has discussed the document Exhibit-41, vide which Assistant Registrar, Co-Operative Societies had rejected the application preferred under Section 101 of the Maharashtra Co-Operative Societies Act, for recovery certificate. According to the learned counsel, the trial Court has

properly recorded the reasonings and acquitted respondent No. 1-original accused.

5. Learned counsel for applicant submits that with list (Exhibit-C) the complainant had filed certified copy of the order passed in Revision Application No. 57 of 2006, which was preferred against the order passed on Exhibit-41, which was referred by the trial Court in paragraph No. 16 of the judgment. He submits that the trial court has ignored this certified copy and thus wrongly given benefit to the respondent No. 1 – original accused.

6. Looking to the controversy between the parties and above arguments, there is arguable case. The evidence needs to be re-appreciated. As such, leave is granted.

7. Application be converted into appeal.

8. Appeal is ***Admitted.***

9. Paper book be got prepared.

10. Action under Section 390 of the Code of Criminal Procedure be taken against respondent No. 1 - original

accused in the trial Court and brief compliance report be called.

11. Mr. Anudeep Sonar, learned counsel dispenses with notice on behalf of respondent No. 1 – original accused and learned Additional Public Prosecutor dispenses notice on behalf of respondent No. 2 – State, after admission of appeal.

Sd/-

(A.I.S. CHEEMA, J.)

MTK